JAMES M. CHUDNOW
JOHN L. MESSINGER

IBLA 82-728 Decided September 10, 1982

Appeal from decisions of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offers M 51321, M 51339, and M 51788.

Affirmed.

1. Oil and Gas Leases: Applications: Description -- Oil and Gas Leases: Description of Land -- Oil and Gas Leases: Rentals

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. However, where the excepted land is not specifically identified in the offer, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

APPEARANCES: James M. Chudnow and John L. Messinger, pro sese.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

James M. Chudnow has appealed from the April 5, 1982, decision of the Montana State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offers M 51321 and M 51339 because the first year's rental was more than 10 percent deficient, citing 43 CFR 3103.3-1. Chudnow and John L. Messinger also appeal from a decision dated April 9, 1982, rejecting oil and gas lease offer M 51788 for the same reasons.

Oil and gas lease offers M 51321 and M 51339 are for surveyed lands and generally describe those lands by legal subdivision, section, township, and range, consistent with the requirement of 43 CFR 3101.1-4(a). However, appellants added the phrase "less patents" to the descriptions of several parcels in each of these offers. Oil and gas lease offer M 51788 describes certain land in T. 3 S., R. 11 W., Principal meridian as "SECTION 3: ALL (EST. 632.00 acres)." No words of exception were used. The township is not surveyed, and the section is protracted. The section consists of 793 acres, but appellants submitted rental only for 632 acres. However, appellants point out that the plat indicated that there were only 632 acres in the section available for leasing, the remainder having been patented. Appellants did not submit sufficient rental to cover all of the acreage within the regularly described subdivisions in the other offers, having subtracted the amount allocable to the patented acreage. The State office rejected the offers, holding that the rental for each offer was more than 10 percent deficient.

Appellants contend that other BLM offices will issue leases described in the same manner as that in question. Appellants point to 43 CFR 3101.1-4(d)(2) which indicates that an offer may include less than an entire protracted section where only a portion of such section is available for lease. Appellants further contend that it seems wholly inappropriate for BLM to base its acreage total upon lands which are unavailable for leasing and which appellants excluded from the filings in question. In making this assertion, appellants are assuming that the land descriptions in their offers were effective in excluding these lands. This assumption is incorrect.

[1] An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within the subdivision may not be available for leasing. See 43 CFR 3101.1-4(a), (d); William B. Collister, 71 I.D. 124 (1964). The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper where the offeror submits full rental for the section or subdivision. Milan S. Papulak, 30 ILBA 77 (1977); William B. Collister, supra; see James M. Chudnow, 62 IBLA 19 (1982); cf. Milan S. Papulak, 63 IBLA 16 (1982) (holding a description to be improper if the phrase "excl. fee" is added to a regular section and insufficient rental is paid for the entire section). Because such qualifying phrases fail to describe specifically the land to be excluded from the offer, offers containing such phrases must be construed as applications for the entire section or subdivision to which the qualifying phrase has been appended. Accordingly, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage which has not been specifically identified, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency. James M. Chudnow, supra; cf. Milan S. Papulak, 30 IBLA 77, 81 (rental held within the limits of curable deficiency); William B. Collister, supra (full rental submitted). If an offeror does not wish to submit rental for an entire section or subdivision which contains patented lands, he may specifically identify the land to be excluded by its legal description or patent number. See, e.g., Leon Jeffcoat, 66 IBLA 80 (1982). Appellants, however, did not do this.

The rental submitted with the offer must correspond to the acreage described in the offer. In Mountain Fuel Supply Co., 13 IBLA 85 (1973), we held that where a lease offer describes land which is not available for leasing, that acreage cannot be disregarded in calculating the total amount of the land. 1/ The Board pointed to 43 CFR 3103.3-1, which requires that "[e]ach offer when first filed, shall be accompanied by full payment of the first year's rental based on the total acreage * * *." (Emphasis added.) See James M. Chudnow, supra. Where an offeror fails to tender sufficient rental to cover all of the land within his offer and the rental tendered is deficient by more than 10 percent, the offer is properly rejected. Id.

1/ In Mountain Fuel Supply Co., supra, an oil and gas lease applicant mistakenly created an ambiguity in a land description so that the description could be construed as including land unavailable for leasing for which the applicant did not intend to apply. The rental submitted by the applicant was not sufficient to cover the land, and because the rental was deficient by more than 10 percent, the offer was rejected in its entirety. The Board rejected the applicant's contention that BLM should have determined what land he intended to apply for by taking into account the amount of acreage for which rental was paid and by considering what acreage was available for leasing. We provided the following reasons for rejecting those arguments:

"To the casual observer this result may appear not only to be harsh, but also to bespeak an obsession with trivia. This is most assuredly not the case.

"A commonplace colloquialism in our language is the expression `a land-office business'. The source of the expression is the large volume of business conducted by land offices when new lands were opened to entry for homesteads. The expression is just as accurate today with respect to the large volume of oil and gas lease applications which must be processed by state offices of the Bureau of Land Management. In order to process this large volume, certain procedures must be followed which for their successful operation require complete accuracy on the part of the applicants. The state offices simply do not have the time, the money, or the authority to correct errors of applicants. The effect, of course, is to place the economic cost of errors on those seeking benefit from the public lands, and not on the taxpayer. We believe that this result is consistent with the public interest.

"Further, if Bureau personnel undertook to `correct' deficient oil and gas lease offers they would run the risk of doing so improperly, i.e., deleting land from the description that the offeror actually intended to include, altering the description to include land that the offeror did not want, or entering some other item of omitted information incorrectly. Uniformity of administration would suffer if individual Bureau officials 'corrected' applications in certain instances and failed to make such corrections in other cases.

"Finally, the statute gives preference to the first qualified offer. If Bureau personnel 'qualified' a deficient first-filed offer, such action would work to the detriment of one who subsequently filed an adequate offer." Id. at 87.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge